Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Promotion of Competitive Networks in Local Telecommunications	WT Docket No. 99-217
Wireless Communications Association International, Inc. Petition for Rulemaking To Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services	
Cellular Telecommunications Industry Association Petition for Rulemaking and Amendment of the Commission's Rules To Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes And Assessments	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98

INITIAL REGULATORY FLEXIBILITY ANALYSIS COMMENTS OF THE NATIONAL ASSOCIATION OF COUNTIES, THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, AND MONTGOMERY COUNTY, MARYLAND

August 27, 1999

The National Association of Counties; the National Association of Telecommunications Officers and Advisors; and Montgomery County, Maryland, by their attorneys, and, where appropriate, on behalf of their members, hereby file the following comments in response to the Initial Regulatory Flexibility Analysis ("IRFA") contained in the Appendix to the Notice of Proposed Rulemaking ("NPRM") and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98 ("IRFA Appendix").

We concur with the comments filed by the Real Access Alliance with respect to the IRFA Appendix.[1] The Commission's Regulatory Flexibility Act ("RFA") analysis lists the types of small entities affected by the proposed rules, mentioning municipalities (though only in connection with the proposed antenna siting preemption rule) as well as building owners and managers, which may include local governments.[2] But the IRFA Appendix does nothing to satisfy the statutory requirements of 5 U.S.C. § 603(c) by actually presenting any significant alternatives that might minimize the impact on small communities.

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[1] Joint IRFA Comments of Building Owners and Managers Association International; National Association of Real Estate Investment Trusts; Institute of Real Estate Management; International Council of Shopping Centers; Manufactured Housing Institute; National Apartment Association; National Association of Home Builders; National Association of Industrial and Office Properties; National Association of Realtors; National Multi Housing Council; and National Realty Committee, Docket No. 99-217, filed August 27, 1999 ("Real Access Alliance IRFA Comments").

[2] IRFA Appendix at ¶¶ 29, 24.

It is unlikely that Congress intended the RFA merely to generate more paper by requiring agencies to append lists of affected entities to their rulemakings. Rather, the purpose of the RFA is to divert agencies from embracing without question the easy answers (easy, that is, for the agencies) and to stimulate development and consideration of alternatives. In this case, it requires the Commission to take seriously the questions: (a) is there a problem that must be solved? and (b) if so, is there a less burdensome way to solve it?

As has been pointed out in the principal comments, the Commission has not yet shown that the NPRM identifies a competitive bottleneck that must be broken. On the other hand, the burdens upon small communities are substantial. The NPRM's requirements for building owners and managers represent the federalizing of what is currently a growing local market in site leasing. Local communities would be at one blow deprived of a revenue stream that could reduce local tax burdens, and condemned to litigate their decisions in Washington.

The Commission may not be put off by the prospect of becoming a national review board for building management cases, but the prospect is not encouraging for the thousands of small communities in the United States, few of whom have (or should need) FCC counsel. In any dispute between the telecommunications companies and small communities, it will be the natural recourse of the company to file complaints with the FCC, with whose procedures they are intimately familiar. This will generally be unknown territory for the community. We estimate, for example, that at a minimum

a small governmental jurisdiction would incur additional costs on the order of $10,000 to prepare and carry through a proceeding at the Commission to resolve such a dispute.

The NPRM has not shown that there is sufficient reason to disrupt the existing market relations between building owners and telecommunications providers, where each can resort to the local courts if they cannot otherwise resolve their disputes, and replace this with a centralized national system that by its nature necessarily favors telecommunications providers. Indeed, from the IRFA Appendix's paragraph on municipalities it is apparent that the Commission has not considered the impact of its proposals on small communities *as building owners* at all. Until it does so, with full consideration of possible alternatives, the NPRM is procedurally flawed and must be withdrawn.

Nor is the situation much better with respect to the antenna siting preemption proposal, in which the Commission at least recognizes that local governments have relevant interests. The *only* alternative proposed in the Commission's one-paragraph treatment of this issue is to impose on telecommunications siting the model of the Commission's rules on satellite dishes – the most drastic possible preemption of local authority. Not only is such an approach contrary to statutory law, as pointed out in the principal comments in this rulemaking; it would also impose the greatest possible burden on small communities, which must (once again) litigate all disputes in a distant forum, on the telecommunications providers' home ground, with all presumptions against them.

The Commission has failed to make any attempt at quantifying the cost in time, money and resources that would be required for each of these small communities to learn about the Commission's proposed rules, make over their local ordinances to comply with a new nationwide regime, and learn to file regularly in Washington. And the Commission has shown no evidence of having taken into account the less tangible harm caused by taking away citizens' authority to govern their own communities and work out their own ways to encourage and accommodate the growth of advanced telecommunications services. Indeed, the Commission shows no awareness of the positive value of having numerous communities testing out different methods of encouraging such growth – the "thousand laboratories" of classic federalism.

In other proceedings the Commission has made substantial efforts to accommodate the needs of small cable and telecommunications providers by exempting them from the operation of Commission rules or creating special streamlined procedures in their favor.[3] It is noteworthy that the Commission appears to have given no such creative thought to the needs of small communities here.

As the Real Access Alliance IRFA Comments point out, the approach taken in the NPRM is neither the only nor the least burdensome way of fostering the growth of advanced telecommunications services. Even if the Commission can meet the threshold requirement of demonstrating that local governments form a bottleneck for competitive

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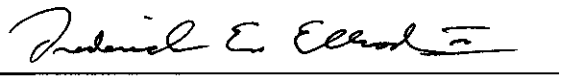
[3] *See, e.g., Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Dockets No. 92-266 and 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95-196, 10 F.C.C. Rcd. 7486 (1995).

networks – and it cannot – the Commission is forbidden by the RFA to proceed with a blunderbuss solution until it has first evaluated less intrusive alternatives.

For the reasons indicated above, the Bureau should withdraw the NPRM and develop a record fully reflecting the concerns of small local communities before proceeding with any proposed rules.

Respectfully submitted,



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